

HYMAN WINIK

IBLA 80-307

Decided March 31, 1980

Appeal from decision of the New Mexico State Office, Bureau of Land Management, rejecting oil and gas lease offer NM-36939

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

Where a drawing entry card offer to lease is prepared by an agent, that is, a person or corporation having discretionary authority to act on behalf of the named offeror, and the offer is signed by such agent on behalf of the offeror, the requirements of 43 CFR 3102.6-1 apply, so that separate statements of interest by both the offeror and the agent must be filed, regardless of whether the latter signed his principal's name or his own name as his principal's agent, and regardless of whether the signature was applied manually or mechanically.

APPEARANCES: William M. King, Esq., Austin, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Hyman Winik filed a simultaneous noncompetitive oil and gas lease offer card with the New Mexico State Office, Bureau of Land Management (BLM), for parcel NM 714 in the May 1979 drawing, which card was drawn with first priority. On May 31, 1979, BLM advised Winik that he was required to file additional evidence concerning the circumstances surrounding the preparation of his offer and the affixing of the facsimile signature on the card.

On June 25, 1979, Winik submitted this evidence, which showed that the facsimile signature was affixed on the card by Leland Capital Corp. (Leland), an oil and gas leasing service, and that Leland acted as Winik's representative in selecting the parcel in question for him.

On December 11, 1979, BLM issued a decision rejecting Winik's offer because both he and Leland had failed to meet the requirements of 43 CFR 3102.6-1 in that they had not filed agency statements. BLM noted therein that these requirements apply to Winik's offer, as it was signed by his agent. Winik appealed from this decision. We affirm.

[1] Where an agent of an offeror for a simultaneous oil and gas lease signs the entry card by affixing a facsimile of the offeror's signature, the requirements of 43 CFR 3102.6-1(a)(2) 1/ apply, and separate statements of interest by both the offeror and the agent must be filed, or the offer will be rejected. H. R. Delasco, 39 IBLA 194 (1979); Gertrude H. D'Amico, 39 IBLA 68 (1979); D. E. Pack (On Reconsideration), 38 IBLA 23, 85 I.D. 408 (1978); D. E. Pack, 30 IBLA 166, 84 I.D. 192 (1977). A person is an "agent" of an offeror if he has authority to act with discretion on the offeror's behalf, such as authority to select the parcel on which to file the offer, rather than only to perform manual or mechanical tasks involving no discretion, such as signing entry cards as the offeror's amanuensis. Ibid.; Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976).

In his Statement of Reasons, appellant does not dispute the application of 43 CFR 3102.6-1 to agents. Rather, he argues that BLM's rejection of his offer on the sole basis that "agency statements" were not submitted under 43 CFR 3102.6-1 was in error because Leland "acted in a clerical capacity as an amanuensis in the submission of appellants offer." Under the amanuensis test, 43 CFR 3102.6-1 is not applicable to a representative who performs in a clerical capacity. D. E. Pack, 30 IBLA 166, 84 I.D. 191 (1972).

It is well settled that an offeror who utilizes an agent in formulating and filing his offers must comply with 43 CFR 3102.6-1. The pivotal issue therefore is whether BLM properly found that Leland was the agent of appellant.

Under the service contract which governed the duties and responsibilities of both Leland and Winik, the parties agreed, inter alia,

1/ For our purposes, the relevant portion of this regulation is subsection (a)(2), set forth in part below:

"(2) If the offer is signed by attorney-in-fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney-in-fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding."

that Leland would file 720 filings on parcels each of which had a potential of \$10,000 or more during a period of 12 months. Leland was also authorized to tender the first year's advance rental. These facts indicate that Leland had the discretionary authority to act for its client in the selection of certain lands, the preparation and filing of offers and the advancement of funds. A leasing service which has such discretion or authority is deemed an agent of the client/offeror. In the circumstances, BLM correctly concluded Leland was Winik's "agent" in formulating and filing this offer. See Lee S. Bielski, 39 IBLA 211 (1979). Because no agency statements were filed by Winik and Leland, as required by 43 CFR 3102.6-1, BLM properly rejected his offer.

Appellant also argues that he meets all of the substantial requirements of a qualified offeror and that no sound policy is served by highly technical requirements which are applied to defeat the rights of persons with a statutory preference to a lease. Even if appellant's argument were valid, and we do not intimate that it is, we are unable to grant the relief requested. An oil and gas lease offer filed under the simultaneous filing procedures, 43 CFR 3112, which is defective for failure to comply with a mandatory regulation may not be cured after the drawing is held. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976). Section 43 CFR 3102.6-1 is a mandatory regulation. Moreover, the rights of third parties are involved, and the Secretary is bound by his own regulations. Churchill Corporation, 27 IBLA 234 (1976); see McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Douglas E. Henriques
Administrative Judge

